

P-16

NO ~~2010~~ 41180

JOHN DOE,

Plaintiff,

V.

ROMAN CATHOLIC
ARCHDIOCESE OF GALVESTON-
HOUSTON, by and through DANIEL
CARDINAL DINARDO, His
Predecessors and Successors, as Bishop
of the ROMAN CATHOLIC
ARCHDIOCESE OF GALVESTON-
HOUSTON, and REVEREND TERRY
BRINKMAN,

Defendants.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

FILED

Loren Jackson
District Clerk

JUL 02 2010

Time: _____
Harris County, Texas
By _____
Deputy

105 JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION
AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE:

COMES NOW, Plaintiff John Doe, and files this Original Petition, complaining of Defendants Roman Catholic Archdiocese of Galveston-Houston, by and through Daniel Cardinal DiNardo, his predecessors and successors, as Bishop of the Roman Catholic Archdiocese of Galveston-Houston (hereinafter referred to as "Archdiocese of Galveston-Houston"), and Reverend Terry Brinkman, and states the following:

8749782

I.

DISCOVERY CONTROL PLAN

Plaintiff affirmatively pleads that he seeks monetary relief aggregating more than \$50,000, and requests that the Court enter a Discovery Control Plan and place this case in Track III.

II.

PARTIES

1. Plaintiff John Doe resides in Harris County, Texas. His identity has been made known to Defendants.

2. Defendant Roman Catholic Archdiocese of Galveston-Houston, by and through Most Reverend Daniel Cardinal DiNardo, his predecessors and successors, is an unincorporated religious association. Defendant Roman Catholic Archdiocese of Galveston-Houston, may be served through its attorney of record, Mr. Robert M. Schick, Vinson & Elkins, LLP, First City Tower, 1001 Fannin Street, Suite 2500, Houston, TX 77002-6760.

3. At the time of the sexual assault and abuse in question, Reverend Terry Brinkman was a Pastor assigned by Defendant Roman Catholic Archdiocese of Galveston-Houston to St. Charles Borromeo Church in Houston, Texas. Said Defendant may be served pursuant to Tex. R. Civ. P. 21a at St. John The Evangelist

Parish, 800 West Baker Road, Baytown, Texas 77521, or wherever said Defendant may be found.

III.

FACTUAL BACKGROUND

1. Reverend Terry Brinkman was a Roman Catholic Priest ordained by the Roman Catholic Church. At all times material herein, Reverend Terry Brinkman remained under the retention, direct supervision, employ, agency, and control of Defendant Roman Catholic Archdiocese of Galveston-Houston. At all times material herein, Reverend Terry Brinkman was assigned by Defendant Roman Catholic Archdiocese of Galveston-Houston to St. Charles Borromeo Church, which was owned, operated, and controlled by the Roman Catholic Archdiocese of Galveston-Houston.

2. Between approximately 1974 and 1976, Reverend Terry Brinkman engaged in sexual contact and abuse, multiple times, with John Doe, who was a minor. The sexual contact and abuse occurred on Defendants' property, at various locations and times, primarily when John Doe was performing church-related services on behalf of St. Charles Borromeo Church.

3. Plaintiff John Doe was raised as a devout Roman Catholic. He attended church-related services regularly and received Holy communion, often administered

by Reverend Brinkman, and frequently served as an altar boy under Reverend Brinkman.

4. As a loyal Catholic, John Doe trusted that the Church and its servants and official representatives would always act as holy and chaste men, in their best interests, and warn them of any known danger.

5. The Archdiocese of Galveston-Houston and its parish, St. Charles Borromeo Church, knew or should have known that Defendant Brinkman was engaging in forbidden sexual contact which was dangerous and damaging to John Doe, and failed to address the issue or otherwise take appropriate action to prevent the sexual contact and abuse.

IV.

CAUSES OF ACTION AGAINST DEFENDANT ROMAN CATHOLIC ARCHDIOCESE OF GALVESTON-HOUSTON

1. At all times material herein, Defendant Brinkman was employed as a priest within Defendant Roman Catholic Archdiocese of Galveston-Houston and was under Defendant's direct supervision and control when he sexually abused John Doe. As an ordained priest, Defendant Brinkman acted upon delegated authority of the Roman Catholic Diocese as an agent for the Bishop of the Archdiocese of Galveston-Houston. Defendant Brinkman came to know John Doe and his family and gained access to him because of his status as a Roman Catholic Priest. Defendant Brinkman engaged in this wrongful conduct while in the course and scope of his employment with Defendant Archdiocese of Galveston-Houston. Therefore, Defendant

Archdiocese of Galveston-Houston is liable for the wrongful conduct of Defendant Brinkman. Plaintiff, therefore, pleads *Respondeat Superior*, agency, apparent agency, and agency by estoppel.

2. Defendant Archdiocese of Galveston-Houston negligently selected, hired, and/or continued the employment of Defendant Brinkman in a position of trust, confidence, and authority as a parish priest when it knew or should have known of his dangerous sexual propensities and misconduct.

3. Defendant Archdiocese of Galveston-Houston failed to warn Plaintiff of Defendant Brinkman's dangerous sexual propensities toward minor boys.

4. Defendant Archdiocese of Galveston-Houston failed to provide reasonable supervision of Defendant Brinkman.

5. Defendant Archdiocese of Galveston-Houston, as a religious organization, is granted special privileges and immunities by society and is in a special fiduciary relationship with Plaintiff. Defendant Archdiocese of Galveston-Houston owed Plaintiff the highest duty of trust and confidence and is required to act in Plaintiff's best interest, and it knowingly violated that relationship. Defendant Archdiocese of Galveston-Houston knowingly breached Plaintiff's trust when it failed to act with the highest degree of trust and confidence to protect Plaintiff John Doe from its sexually predatory priest. This knowing breach of fiduciary duty proximately caused injury to John Doe. Defendant Archdiocese of Galveston-Houston also knowingly participated

in the breach of fiduciary duty committed by Defendant Brinkman, and such knowing conduct proximately caused injury to John Doe.

6. Defendant Archdiocese of Galveston-Houston also committed fraud by non-disclosure and misrepresentation which proximately caused Plaintiff John Doe's damages. Defendant Archdiocese of Galveston-Houston committed fraud when it represented that Defendant Brinkman was a sexually safe, celibate priest, when it knew or should have known of his sexually predatory tendencies.

7. Defendant Archdiocese of Galveston-Houston, at the time and on the occasions in question, acted with heedless and reckless disregard of the safety of John Doe, which disregard was the result of conscious indifference to the rights, welfare, and safety of John Doe in violation of the laws of the State of Texas.

8. John Doe alleges that Defendant Archdiocese of Galveston-Houston and others unknown to Plaintiff, acting in concert, engaged in a plan of action to cover up the incidents of priests' sexual abuse of minors and prevent disclosure, prosecution and civil litigation including, but not limited to, denial of abuse, spoliation of evidence, reassignment of abusive priests, religious duress and coercion, failure to seek out and assist victims, breach of trust and confidence.

9. Plaintiff alleges that the actions of these Defendants have inflicted emotional distress upon John Doe.

10. Plaintiff asserts that the Roman Catholic Archdiocese of Galveston-Houston is liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 302B, under the legal doctrine of negligent assumption of risk of intentional or criminal conduct.

An act or an omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm, even though such conduct is criminal.

Restatement (Second) of Torts, Section 302B.

11. Defendant Archdiocese of Galveston-Houston realized or should have realized that Defendant Brinkman posed an unreasonable risk of harm to adult and minor male parishioners, including John Doe.

12. Plaintiff asserts that Defendant Archdiocese of Galveston-Houston is liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 311, under the legal doctrine of negligent misrepresentation involving risk of physical harm.

(1) One who negligently gives false information to another is subject to liability for physical harm caused by action taken by the other in reasonable reliance upon such information, where such harm results

- (a) to the other, or
- (b) to such third persons as the actor should expect to be put in peril by the action taken.

(2) Such negligence may consist of failure to exercise reasonable care

- (a) in ascertaining the accuracy of the information, or

(b) in the manner in which it is communicated.

Restatement (Second) of Torts, Section 311.

13. Plaintiff asserts that Defendant Archdiocese of Galveston-Houston is liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 317, under the legal doctrine that imposes a duty upon employers to exercise reasonable care in controlling employees to prevent them from intentionally harming others when:

1. the servant

(i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or

(ii) is using a chattel of the master and

2. the master

(i) knows or has reason to know that he has the ability to control his servant, and

(ii) knows or should know of the necessity and opportunity for exercising such control.

Restatement (Second) of Torts Section 317 at 125 (1965).

14. Defendant Archdiocese of Galveston-Houston 's failure to ascertain and apprise John Doe and his family of Defendant Brinkman's sexually predatory nature

and its representation that Defendant Brinkman was not sexually dangerous to adult and minor male parishioners placed John Doe in danger and peril.

15. Plaintiff alleges that the negligence of Defendant Archdiocese of Galveston-Houston resulted in bodily injury to Plaintiff.

16. Defendant Archdiocese of Galveston-Houston is liable to Plaintiff for premises liability. Plaintiff was an invitee of Defendant on Defendant's premises. Defendant Archdiocese of Galveston-Houston owed a duty of care to those who may be harmed by criminal acts on its premises when the risk of criminal conduct is so great that it is both unreasonable and foreseeable. Defendant Archdiocese of Galveston-Houston was aware of criminal acts of assault by Defendant Brinkman to Plaintiff on its property and breached its duty of care to Plaintiff.

17. Plaintiff asserts that all entities and individuals who are named as Defendants are liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 876, under the legal doctrine of concert of action, as joint venturers and as agents of these entities, under which theories Plaintiff seeks damages from all Defendants jointly and severally.

V.

**CAUSE OF ACTION AGAINST DEFENDANT
REVEREND TERRY BRINKMAN**

1. Defendant Brinkman was a Roman Catholic priest. He had taken a variety of priestly vows, including vows of chastity and celibacy. Notwithstanding these

vows, while a priest, Defendant Brinkman sexually abused John Doe and made sexual advances towards other male parishioners during his assignment at St. Charles Borromeo Church in Houston, Texas.

2. Defendant Brinkman knew of his own dangerous sexual propensities toward minor boys.

3. Defendant Brinkman made sexual contact with Plaintiff John Doe and thereby assaulted and abused him when he knew or should have reasonably believed that such contact would be provocative and/or offensive to him.

4. Defendant Brinkman's sexual abuse resulted in the infliction of emotional distress on Plaintiff John Doe.

5. Defendant Brinkman violated Sections 21.11, 22.011, 22.041, and 43.25 of the Texas Penal Code when he engaged in the above-described sexual conduct with John Doe. Such violation of these criminal statutes constitute negligence *per se*.

6. Defendant Brinkman maintained himself in a position of trust, confidence, and authority as a parish priest for Plaintiff and negligently used this trust, confidence, and authority to sexually abuse John Doe.

7. Defendant Brinkman knowingly breached this fiduciary relationship when he sexually violated John Doe which proximately caused damages to him.

8. Defendant Brinkman, at the time and on the occasions in question, acted with heedless and reckless disregard of the safety of John Doe, which disregard was

the result of conscious indifference to the rights, welfare, and safety of John Doe in violation of the laws of the State of Texas.

9. Plaintiff alleges that the negligence of Defendant Brinkman resulted in bodily injury to Plaintiff.

VI.

CLAIMS OF CONSPIRACY

1. All Defendants herein and parties outside the Church entered into a civil conspiracy, accompanied by a meeting of the minds regarding concerted action, the purposes of which were to suppress and minimize public knowledge of the widespread sexual abuse of minors by Catholic Priests and to take a uniform position and approach to the handling of reports of abuse. This uniform position and approach was designed to avoid prosecution of clergy offenders, prevent or minimize claims for damages, avoid public exposure of the sexual abuse of children by Catholic Priests, protect the reputation of the Catholic Church from scandal, and thus ensure the continued financial contributions of the Catholic laity. This conspiracy included spoliation of evidence.

2. This conspiracy and concert of action was carried out by Defendants to conceal and fraudulently conceal the fact that Defendants committed acts of negligence, gross negligence, fraud, and breach of fiduciary duty, and have engaged

in concerted action to commit acts of negligence, gross negligence, fraud, and breach of fiduciary duty.

3. In the absence of this conspiracy and concert of action, Defendants would have responded to repeated notice of the abuse of children by Roman Catholic Priests and issued general and specific warnings to the laity. Had a proper warning been issued, Defendant Brinkman would never have had unsupervised access to Plaintiff and this sexual abuse and exploitation would never have occurred. Thus, Defendants' actions in furtherance of this conspiracy are a proximate cause of the injuries and damages herein.

4. Defendants engaged in a conspiracy to conceal the sexual and mental problems of Defendant Brinkman and the sexual abuse of other children by other Priests, including Priests of the Archdiocese of Galveston-Houston. Defendants advanced the purposes of this conspiracy by failing to study, to disclose, and to warn of the dangers of child sexual abuse by Catholic Priests despite notice and knowledge of the risk dating back many decades, and by failing to promulgate proper policies for admission to the Seminary and for supervision of its priests.

5. Plaintiff alleges that officials of the Archdiocese of Galveston-Houston, with others as plead herein, engaged in a conspiracy to avoid the prosecution of Defendant Brinkman and to cover up the sexual abuse, sexual advances, and mental problems of Defendant Brinkman and many others. The purpose of this conspiracy

was to prevent criminal prosecution, avoid adverse publicity, prevent claims for damages by the numerous minor victims, and to avoid exposure of this conspiracy to conceal the claims arising from the crimes of these Priests ordained by Defendant Archdiocese of Galveston-Houston. Further, officials of the of the Archdiocese of Galveston-Houston, in furtherance of the overall conspiracy alleged, engaged in affirmative acts to conceal the existence of this conspiracy. Further, this conspiracy concealed acts of fraud, breach of fiduciary duty, negligence, and gross negligence. Plaintiff pleads this conspiracy tolls the statute of limitations.

VII.

DAMAGES TO PLAINTIFF JOHN DOE

1. As a result of the conduct and incidents described herein, John Doe will incur counseling or medical expenses in the future.
2. Plaintiff has experienced severe psychological pain and suffering in the past and in all reasonable probability will sustain severe psychological pain and suffering in the future as a result of his psychological injuries.
3. Plaintiff has suffered mental anguish in the past and in all reasonable probability will sustain mental anguish in the future.
4. Plaintiff suffered physical pain and/or bodily injury from the sexual assaults.

5. Plaintiff has suffered many other damages including loss of faith in God, and in all reasonable probability, his social and professional judgment in the future will be adversely impacted.

6. Plaintiff sustained physical impairment damages and loss of earning capacity.

7. Plaintiff also seeks punitive and exemplary damages in order to punish and deter the outrageous conduct taken in heedless and reckless disregard for the safety of Plaintiff and, as a result of Defendants' conscious indifference to the rights, welfare, and safety of Plaintiff in violation of the laws of the State of Texas.

VIII.

REQUEST FOR INITIAL DISCLOSURE

Pursuant to Rule 194, Texas Rules of Civil Procedure, Defendants are requested to disclose to Plaintiff, within 50 days of service of this request, the information or material described in Rule 194.2 to be produced at The Turley Law Firm, 1000 Turley Law Center, 6440 North Central Expressway, Dallas, Texas 75206, during normal business hours.

IX.

CLAIM FOR PREJUDGMENT AND POSTJUDGMENT INTEREST

Plaintiff herein claims prejudgment interest and postjudgment interest in accordance with Texas Finance Code §304.001 *et seq.* and any other applicable law.

X.

NOTICE PURSUANT TO T.R.C.P. 193.7

Plaintiff provides notice to Defendant pursuant to Rule 193.7 of the Texas Rules of Civil Procedure that Plaintiff may utilize as evidence during the trial of this lawsuit all documents exchanged by the parties in written discovery in this case.

XI.

PRAYER

Plaintiff herein claims interest in accordance with Texas Finance Code, §304.001, *et seq.* and any other applicable law.

For these reasons, Plaintiff John Doe prays that Defendants be served and cited to appear and answer herein and upon final hearing of this cause, that Plaintiff have judgment against Defendants, jointly and severally, for damages described herein, for cost of suit, interest as allowable by law and for such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

TURLEY LAW FIRM



Steven S. Schulte

State Bar No. 24051306

6440 North Central Expressway

1000 Turley Law Center

Dallas, Texas 75206

Telephone No. 214/691-4025

Telecopier No. 214/361-5802

ATTORNEY FOR PLAINTIFF

Unofficial Copy Office of Chris Daniel District Clerk

NO. 2010-41180

JOHN DOE,

Plaintiff,

V.

ROMAN CATHOLIC
ARCHDIOCESE OF GALVESTON-
HOUSTON, by and through DANIEL
CARDINAL DiNARDO, His
Predecessors and Successors, as
Bishop of the ROMAN CATHOLIC
ARCHDIOCESE OF GALVESTON-
HOUSTON, and REVEREND
TERRY BRINKMAN,

Defendants.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

125th JUDICIAL DISTRICT

AFFIDAVIT OF [REDACTED]

STATE OF TEXAS

COUNTY OF DALLAS

BEFORE ME, the undersigned notary, on this day personally appeared [REDACTED], known to me to be a person the person whose name is subscribed to this instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed. Upon his oath, [REDACTED], states the following based on his personal knowledge and that same is true and correct:

1. My name is [REDACTED]. I am over the age of 18. I am a Plaintiff in the above-styled lawsuit. I was born on [REDACTED] 1962 in Houston, Texas. I have personal knowledge of the facts stated in this Affidavit, and all facts and matters set forth below are true and correct.

AFFIDAVIT OF [REDACTED] - Page 1


2. I was raised as a Roman Catholic. I attended church and received Holy Communion regularly. I was taught and believed in the teachings of the Roman Catholic Church and developed great trust, confidence, reverence, respect, and obedience to the Church and its Holy Fathers, the Catholic Priests, including Father Brinkman. I was taught that Catholic Priests were honorable and trustworthy. I was taught to believe that Catholic Priests were God's representatives here on Earth and to trust, obey, and respect them unconditionally, as I would God.
3. I was baptized at Assumption in Houston, Texas, in approximately 1963, received my first Holy Communion at Assumption in Houston, Texas in approximately 1969, and was confirmed at St. Charles Borromeo in Houston, Texas in approximately 1975.
4. I attended private school at St. Charles from approximately 1974 through 1976, and regularly attended mass and served as an altar boy at St. Charles Borromeo Church. It was during this time that I first met Father Terrence ("Terry") Brinkman. I worked directly with Father Brinkman in performing church-related services, including mass, weddings, and funerals.
5. Father Brinkman sexually abused and molested me at least two times while I attended St. Charles and was serving as an altar boy for the Church.
6. The first sexual abuse by Father Brinkman happened on a Sunday, right around 10:00 a.m., before the start of the 10:00 a.m. Mass. I had just put on my cassocks when Father Brinkman came behind me and asked: "it is fitting alright" and then he started touching me pretending that he was fixing my collar and then his hand kept moving down, he started groping me from behind and he was breathing hard. I turned around and asked him: "Father, are you ok?" and he just looked at me in shock and walked away.
7. I do not recall many details surrounding the second sexual abuse incident. This incident happened at St. Charles Church, after school. My mother was still in the classroom teaching and I was in the back of the Church, in the dressing area of the altar boys. I remember seeing Father Brinkman placing a piece of cloth with a substance on my mouth. I was somehow rendered unconscious, and recall waking up, this time next to holy water, and my pants were down.

8. The third sexual abuse incident occurred after I had performed a church-related service with Father Brinkman. I was in the dressing room, de-robing, when Father Brinkman came up behind me, and grabbed me, and shoved a cloth or rag drenched in a substance to my face. When I awoke, I was being sodomized by Father Brinkman. My hands were tied between my legs and my head was pushed up against a corner of the room. Father Brinkman was wearing his priest collar and shirt as he sodomized me. I recall him grunting as he did so. Upon realizing that I was conscious, Father Brinkman, again, shoved the rag or cloth to my face, which, again, knocked me out. When I awoke, I was outside in a Church courtyard. My underwear was down, my head and knees burned, and my entire body was sore. I was covered with urine and/or feces as well as blood. I bled from my anus for about one week after this sexual abuse incident.
9. The fourth sexual abuse incident happened before I had performed a church-related service with Father Brinkman. I was putting on my robe, inside the Church, when Father Brinkman came up behind me and began to grab and fondle me. I yelled at him and slapped his hand away. Apparently, another priest, Father Wendland (sp?), overheard my yell and opened the door. I ran toward the opened door and Father Wendland (sp?). Father Wendland (sp?) asked me if everything was ok and I said no. He then asked me if Father Brinkman had ever touched me inappropriately, and I responded yes.
10. I have never seen Father Brinkman since the fourth incident. He was removed from St. Charles shortly after the fourth incident. I believe others were abused or molested by Father Brinkman, including other children who served as altar boys and performed church-related services with me and Father Brinkman.
11. Before filing this lawsuit, neither St. Charles nor the Archdiocese of Galveston-Houston, disclosed to me Father Brinkman's past or that he was not sexually safe to be around or alone with. The Archdiocese of Galveston-Houston never disclosed to me that I could pursue a claim against it for their actions and omissions which allowed the sex abuse and molestation to occur.
12. Attached to my Affidavit, as **Exhibit A**, are five photographs depicting Father Brinkman in the mid-70's. These photographs were provided to my attorney by the Defendants. I have carefully studied these photographs and can confirm that these photographs depict the same Father Brinkman who sexually abused and molested me in the mid-1970's.

Further, affiant sayeth not."

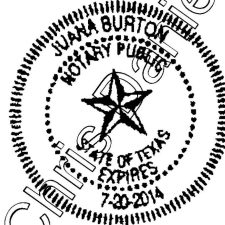

[Redacted]

Sworn to and subscribed to before me by [Redacted]
on October 21, 2010.


Notary Public in and for
The State of Texas

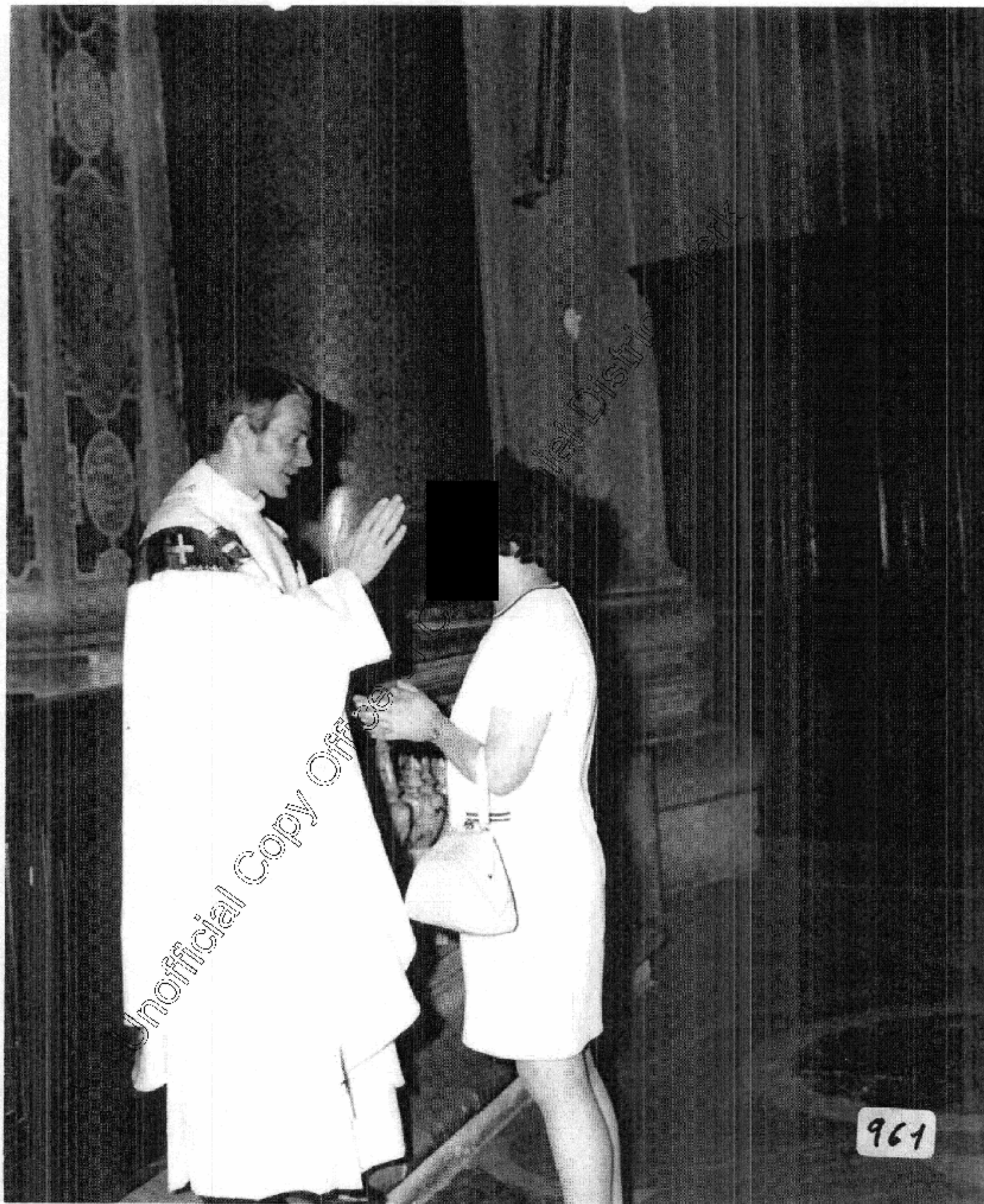
My Commission Expires:

01/20/2014



AFFIDAVIT OF [Redacted] - Page 4

Doc - Affidavit of Plaintiff - See-§101.01.002.wpd





SUMMER '74



Summer '74



Unofficial Copy Office of Chris Daniel District Clerk

SUMMER '74



No. 2010-41180

JOHN DOE,
Plaintiff

IN THE DISTRICT COURT OF

v.

ROMAN CATHOLIC ARCHDIOCESE OF
GALVESTON-HOUSTON, by and through
DANIEL CARDINAL DINARDO, His
Predecessors and Successors, as Bishop of the
ROMAN CATHOLIC ARCHDIOCESE OF
GALVESTON-HOUSTON, and REVEREND
TERRY BRINKMAN,
Defendants

HARRIS COUNTY, TEXAS

25th JUDICIAL DISTRICT

**REVEREND TERRY BRINKMAN'S OBJECTIONS AND ANSWERS TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES**TO: Plaintiffs, by and through their attorney of record, Steven S. Schulte, Turley Law Firm,
6440 North Central Expressway, 1000 Turley Law Center, Dallas, Texas 75206.Pursuant the Texas Rules of Civil Procedure, Defendant Terence P. Brinkman
(Brinkman) serves the following answers and objections to Plaintiff's First Set of Interrogatories.

Respectfully submitted,

HAYS, McCONN, RICE & PICKERINGBy: Michael S. Hays
Michael S. Hays

State Bar No.09304500

1233 West Loop South

Suite 1000

Houston, Texas 77027

Telephone: (713) 654-1111

Facsimile: (713) 650-0027

ATTORNEY FOR DEFENDANT
REVEREND TERRY BRINKMAN


CERTIFICATE OF SERVICE

I certify that a true and correct copy of *Terry Brinkman's Objections and Answers to Plaintiff's First Set of Interrogatories* was served on the following counsel of record by facsimile on October 7 2010:

Steven S. Schulte
TURLEY LAW FIRM
6440 North Central Expressway
1000 Turley Law Center
Dallas, Texas 75206
Facsimile: 214.361.5802
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Attorneys for plaintiff John Doe

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1001 Fannin, Suite 2500
Houston, Texas 77002
Attorneys for Archdiocese of Galveston-Houston


Michael S. Hays

OBJECTIONS TO DEFINITIONS:

2. **Objection: vague and overly broad.**
5. **Objection: overly broad.**
7. **Objection: overly broad.**
- 8(d) **Objection: overly broad and such request exceeds the permissible scope of the Texas Rules of Civil Procedure.**

OBJECTIONS TO INSTRUCTIONS:

5. **Objection. Defendant objects to the instruction in Plaintiffs' Written Interrogatories in that it is overly broad, vague and provides that Defendant furnish responses that include core work product, and the attorney client privilege. Further, it exceeds the requirements set forth in the Texas Rules of Civil Procedure.**

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**REVEREND TERRY BRINKMAN'S OBJECTIONS AND ANSWERS TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES**

INTERROGATORY NO. 1: Since 1960 or your being ordained, whichever is earlier, please state:

- (a) every parish and school you have served or worked in, and the dates of service and work;
- (b) your position and title at each parish and school;
- (c) the dates of service or work at each parish and school;
- (d) the reason for your removal, transfer, and/or assignment from and to each parish and school; and
- (e) your current parish and school.

ANSWER: In Answer to (a) – (e):

Specific Dates	Assignment	Position	Time	Reason for Transfer/Removal
August 1973- October 1974	Resurrection Church, Houston, TX [school]	Assistant	14 Months	Normal Transfer
November 1974- May 1976	St. Charles Borromeo, Houston, TX [school]	Assistant	19 Months	Normal Transfer
June 1976 – July 1976	Temporary assignment, St. Francis of Assisi, Houston, TX [school]	In Charge	1 Month	The former Pastor was going to La Marque – the new Pastor was on a month long vacation in Ireland. Acted as fill in.
Mid July 1976 – August 1976	Temporary assignment, St. Joseph, Brazoria, TX	In Charge	3 Weeks	Pastor at St. Joseph's in Brazoria on vacation. Acted as fill in.
August 1976 – July 1979	St. Michael, Houston, TX [school]	Assistant	31 Months	Chosen to go for Doctoral Studies in Rome
	Doctoral Studies, Rome, Italy	Student/Priest	28 Months	After 1982 Graduated
July 1980 – September 1980	Summer assignment St. Gregory the Great, Houston, TX	In Charge	3 Months	Acted as fill in for the summer for the Parish as the Pastor recuperated from his injuries in a car accident. Then, returned to Rome.

Specific Dates	Assignment	Position	Time	Reason for Transfer/Removal
July 1981 - September 1981	Summer assignment Prince of Peace, Houston, TX	Assistant	3 Months	Filled in as an Assistant until a permanent one was found. Then, returned to Rome.
July 1982 - September 1982	Temporary assignment, St. Cecilia, Houston, TX [school]	Assistant	3 Months	Filled in as Assistant since the Pastor was dying. When he died, I was transferred
September 1982 - July 1984	St. Martha, Kingwood, TX	Assistant	22 Months	Normal transfer
1982-1991	Adjunct Professor, St. Mary Seminary, Houston, TX	Adjunct Professor	9 Years	Replaced by new Permanent Professor
July 1984 - July 1995	St. Christopher, Houston, TX [school]	Pastor	11 Years	Normal Transfer
July 1995 - July 2001	St. Martha, Kingwood, TX [school]	Pastor	6 Years	Normal Transfer
July 2001 - April 2008	Sacred Heart, Crosby, TX [school]	Pastor	7 Years	Normal Transfer
April 2008 - Present	St. John the Evangelist, Baytown, TX	Pastor	April 2008 - Present	Still There

[school] means that there was an elementary and/or middle school attached to the Parish.

INTERROGATORY NO. 2: With respect to every child whom you have abused or acted or behaved inappropriately with, please specify:

- (a) the name of the child and when the abuse or inappropriate action or behavior occurred;
- (b) a general description of the abuse or inappropriate action or behavior with regard to each child;
- (c) the age of each child, and approximate year, when the abuse or inappropriate action or behavior occurred;
- (d) any substance or device or item you used to help facilitate the abuse or inappropriate action or behavior with the child; and
- (e) the name of any individual who was made aware of your having abused or acted or behaved inappropriately with children.

ANSWER: OBJECTION. Assumes facts not in evidence and is not limited as to time. Further, Defendant objects to the interrogatory because it is vague and overly broad. Without waiving the foregoing:

- (a) I have not engaged in inappropriate behavior with a child.
- (b) See Answer to Interrogatory 2(a).
- (c) See Answer to Interrogatory 2(a).
- (d) See Answer to Interrogatory 2(a).
- (e) See Answer to Interrogatory 2(a).

No. 2010-41180

JOHN DOE,
Plaintiff

v.

ROMAN CATHOLIC ARCHDIOCESE OF
GALVESTON-HOUSTON, by and through
DANIEL CARDINAL DINARDO, His
Predecessors and Successors, as Bishop of the
ROMAN CATHOLIC ARCHDIOCESE OF
GALVESTON-HOUSTON, and REVEREND
TERRY BRINKMAN,
Defendants

IN THE DISTRICT COURT OF

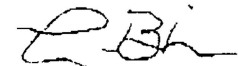
HARRIS COUNTY, TEXAS

125th JUDICIAL DISTRICT

VERIFICATION

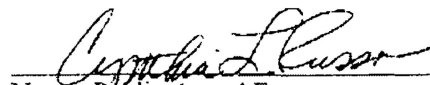
Before me, the undersigned notary, on this day personally appeared, Terence Brinkman the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

"My name is Terence Brinkman. I am capable of making this verification. I have read the Answers to Plaintiff's First Set of Interrogatories. The facts stated in it are within my personal knowledge and are true and correct."



TERENCE BRINKMAN

SWORN TO AND SUBSCRIBED before me, Notary Public, on this the 7th day of October, 2010.



Notary Public, In and For
the State of Texas
My Commission Expires: 8/19/2012

No. 2010-41180

JOHN DOE,
Plaintiff

IN THE DISTRICT COURT OF

v.

ROMAN CATHOLIC ARCHDIOCESE OF
GALVESTON-HOUSTON, by and through
DANIEL CARDINAL DINARDO, His
Predecessors and Successors, as Bishop of the
ROMAN CATHOLIC ARCHDIOCESE OF
GALVESTON-HOUSTON, and REVEREND
TERRY BRINKMAN,
Defendants

HARRIS COUNTY, TEXAS

125th JUDICIAL DISTRICT

**REVEREND TERRY BRINKMAN'S OBJECTIONS AND RESPONSES TO
PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS**

TO: Plaintiffs, by and through their attorney of record, Steven S. Schulte, Turley Law Firm,
6440 North Central Expressway, 1000 Turley Law Center, Dallas, Texas 75206.

Pursuant the Texas Rules of Civil Procedure, Defendant Terence P. Brinkman
(Brinkman) serves the following responses and objections to Plaintiff's First Request for
Admissions.

Respectfully submitted,

HAYS, McCONN, RICE & PICKERING

By: 

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ATTORNEY FOR DEFENDANT
REVEREND TERRY BRINKMAN

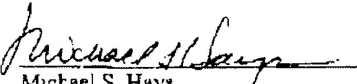
CERTIFICATE OF SERVICE

I certify that a true and correct copy of *Terry Brinkman's Objections and Responses to Plaintiff's First Request for Admissions* was served on the following counsel of record by facsimile on October 12th 2010:

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Michael S. Hays

Unofficial Copy Office of Chris Daniel District Clerk

**REVEREND TERRY BRINKMAN'S OBJECTIONS AND RESPONSES TO
PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS**

REQUEST FOR ADMISSION NO. 1: Admit or deny that in 1974, you served at St. Charles in Houston, Texas.

RESPONSE: Admit only that I served at St. Charles Borromeo for part of 1974.

REQUEST FOR ADMISSION NO. 2: Admit or deny that in 1975, you served at St. Charles in Houston, Texas.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 3: Admit or deny that in 1976, you served at St. Charles in Houston, Texas.

RESPONSE: Admit only that I served at St. Charles Borromeo for part of 1976.

REQUEST FOR ADMISSION NO. 4: Admit or deny that, from 1974 through 1976, St. Charles was a parish within the Roman Catholic Archdiocese of Galveston-Houston.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 5: Admit or deny that, from 1974 through 1976, you served as a priest at St. Charles for the benefit of the Roman Catholic Archdiocese of Galveston-Houston.

RESPONSE: Admit only that I served as priest at St. Charles Borromeo for part of 1974, 1975 and part of 1976.

REQUEST FOR ADMISSION NO. 6: Admit or deny that, from 1974 through 1976, you led funerals and weddings at St. Charles in Houston, Texas.

RESPONSE: Admit only that for part of 1974 through part of 1976, I may have performed a funeral or wedding.

REQUEST FOR ADMISSION NO. 7: Admit or deny that you were appointed to St. Charles by the Bishop of the Roman Catholic Archdiocese of Galveston-Houston.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 8: Admit or deny that you sexually fondled Plaintiff John Doe while serving at St. Charles in Houston, Texas.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 9: Admit or deny that you breached your fiduciary relationship with John Doe by having sexual contact with him.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 10: Admit or deny that you administered sacraments to John Doe.

RESPONSE: I can neither admit nor deny this request in as much as I didn't know or recall John Doe.

REQUEST FOR ADMISSION NO. 11: Admit or deny that you were an employee of the Roman Catholic Archdiocese of Galveston-Houston from 1974 through 1976.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 12: Admit or deny that you were under the direct supervision of the Archdiocese of Galveston-Houston from 1974 through 1976.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 13: Admit or deny that you were a Roman Catholic priest from 1974 through 1976.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 14: Admit or deny that, as a Roman Catholic priest, you took a vow of celibacy.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 15: Admit or deny that you had sexual contact with Plaintiff John Doe.

RESPONSE Deny.

REQUEST FOR ADMISSION NO. 16: Admit or deny that you violated Section 21.11 of the Texas Penal Code by having sexual contact with John Doe.

RESPONSE: OBJECTION. Vague and indefinite. Assumes facts not in evidence and calls for a legal conclusion. I have no knowledge of Section 21.11 of the Texas Penal Code. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 17: Admit or deny that you violated Section 22.011 of the Texas Penal Code by having sexual conduct with John Doe.

RESPONSE: OBJECTION. Vague and indefinite. Assumes facts not in evidence and calls for a legal conclusion. I have no knowledge of Section 22.011 of the Texas Penal Code. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 18: Admit or deny that you violated Section 22.041 of the Texas Penal Code by having sexual conduct with John Doe.

RESPONSE: OBJECTION. Vague and indefinite. Assumes facts not in evidence and calls for a legal conclusion. I have no knowledge of Section 22.041 of the Texas Penal Code. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 19: Admit or deny that you violated Section 43.25 of the Texas Penal Code by having sexual contact with John Doe.

RESPONSE: OBJECTION. Vague and indefinite. Assumes facts not in evidence and calls for a legal conclusion. I have no knowledge of Section 43.25 of the Texas Penal Code. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 20: Admit or deny that the Archdiocese of Galveston-Houston was aware of your sexual advances towards young boys prior to 1974.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 21: Admit or deny that the Archdiocese of Galveston-Houston was aware of your sexual advances towards young boys prior to 1975.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 22: Admit or deny that the Archdiocese of Galveston-Houston never discussed your mental problems with you prior to your sexually molesting John Doe.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 23: Admit or deny that the Archdiocese of Galveston-Houston never discussed your emotional problems with you prior to your sexually molesting John Doe.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 24: Admit or deny that the Archdiocese of Galveston-Houston never discussed your physical problems with you prior to your sexually molesting John Doe.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 25: Admit or deny that the Archdiocese of Galveston-Houston never warned the students at St. Charles about your sexual propensity for young boys.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 26: Admit or deny that prior to 1974, there had been complaints about your sexual advances on children that the Archdiocese was aware of.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 27: Admit or deny that prior to 1976, there had been complaints about your sexual advances on children that the Archdiocese was aware of.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 28: Admit or deny that you were sent by the Archdiocese of Galveston-Houston for a psychological evaluation.

RESPONSE: Admit only that prior to becoming a priest, I underwent a psychological exam.

REQUEST FOR ADMISSION NO. 29: Admit or deny that from 1974 through 1976, you served at St. Charles.

RESPONSE: OBJECTION. Duplicative. Deny. See Response to Request for Admission No. 1.

REQUEST FOR ADMISSION NO. 30: Admit or deny that when you were serving at St. Charles, you were accountable to the Bishop. For the purpose of this admission, "accountable" means that the Bishop had some supervisory role over you from 1974 through 1976.

RESPONSE: OBJECTION. Calls for me to admit or deny the role of the Bishop. Admitted the Bishop had some supervisory role. Denied as it concerns the time frame of 1974 through 1976.

REQUEST FOR ADMISSION NO. 31: Admit or deny that the Bishop of the Roman Catholic Archdiocese of Galveston-Houston administered faculties to you.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 32: Admit or deny that, from 1974 through 1976, the nuns of St. Charles were under the direct supervision of the Roman Catholic Archdiocese of Galveston-Houston.

RESPONSE: I am without sufficient information to admit or deny this request.

REQUEST FOR ADMISSION NO. 33: Admit or deny that, from 1974 through 1976, the nuns of St. Charles were under the direct supervision of the Bishop of the Roman Catholic Archdiocese of Galveston-Houston.

RESPONSE: I am without sufficient information to admit or deny this request.

REQUEST FOR ADMISSION NO. 34: Admit or deny that you reported to the Bishop of the Roman Catholic Archdiocese of Galveston-Houston.

RESPONSE: Denied that I report to the Bishop on a daily basis.

REQUEST FOR ADMISSION NO. 35: Admit or deny that you engaged in sexual acts with more than one minor while at St. Charles in Houston, Texas.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 36: Admit or deny that you had an alcohol problem while at St. Charles in Houston, Texas.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 37: Admit or deny that you had a drug or substance abuse problem while at St. Charles in Houston, Texas.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 38: Admit or deny that you had a sex or abuse problems while at St. Charles in Houston, Texas.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 39: Admit or deny that John Doe was not the first minor boy with whom you engaged in sexual acts or abuse.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 40: Admit or deny that you used a substance to disable or render John Doe unconscious before engaging in sexual acts or abuse with John Doe.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory and presumes a sexual act took place. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 41: Admit or deny that you had sexual contact with Plaintiff John Doe.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 42: Admit or deny that you violated Section 22.011 of the Texas Penal Code by having sexual contact with John Doe.

RESPONSE: OBJECTION. Duplicative. See Response to Request for Admission No. 16.

REQUEST FOR ADMISSION NO. 43: Admit or deny that you violated Section 22.011 of the Texas Penal Code by having sexual conduct with John Doe.

RESPONSE: OBJECTION. Duplicative. See Response to Request for Admission No. 17.

REQUEST FOR ADMISSION NO. 44: Admit or deny that you violated Section 22.041 of the Texas Penal Code by having sexual conduct with John Doe.

RESPONSE: OBJECTION. Duplicative. See Response to Request for Admission No. 18.

REQUEST FOR ADMISSION NO. 45: Admit or deny that you violated Section 43.25 of the Texas Penal Code by having sexual contact with John Doe.

RESPONSE: OBJECTION. Duplicative. See Response to Request for Admission No. 19.

REQUEST FOR ADMISSION NO. 46: Admit or deny that you were aware of your sexual advances towards young boys prior to 1974.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 47: Admit or deny that the Archdiocese of Galveston-Houston was aware of your sexual advances towards young boys prior to 1976.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 48: Admit or deny that you never discussed with the Archdiocese of Galveston-Houston your mental problems prior to sexually molesting John Doe.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 49: Admit or deny that you never discussed with the Archdiocese of Galveston-Houston your emotional problems prior to sexually molesting John Doe.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 50: Admit or deny that you never discussed with the Archdiocese of Galveston-Houston your physical problems prior to sexually molesting John Doe.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 51: Admit or deny that the Archdiocese of Galveston-Houston never warned the students at St. Charles about your sexual propensity for young boys.

RESPONSE: OBJECTION. Assumes facts not in evidence, is harassing and inflammatory. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 52: Admit or deny that prior to 1974, there had been complaints about your sexual advances on children that the Archdiocese of Galveston-Houston was aware of.

RESPONSE: OBJECTION. Assumes facts not in evidence and is inflammatory and harassing. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 53: Admit or deny that prior to 1976, there had been complaints about your sexual advances on children that the Archdiocese of Galveston-Houston was aware of.

RESPONSE: OBJECTION. Assumes facts not in evidence and is inflammatory and harassing. Without waiving the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 54: Admit or deny that you were sent by the Archdiocese of Galveston-Houston for a psychological evaluation.

RESPONSE: OBJECTION. Duplication of Request for Admission No. 28. See Response to Request for Admissions No. 28.

Unofficial Copy Office of Chris Daniel District Clerk

No. 2010-41180

JOHN DOE,
Plaintiff

v.

ROMAN CATHOLIC ARCHDIOCESE OF
GALVESTON-HOUSTON, by and through
DANIEL CARDINAL DINARDO, His
Predecessors and Successors, as Bishop of the
ROMAN CATHOLIC ARCHDIOCESE OF
GALVESTON-HOUSTON et al.,
Defendants

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

125th JUDICIAL DISTRICT

Archdiocese's Motion for Summary Judgment

The Archdiocese moves for summary judgment under Texas Rule of Civil Procedure 166a because the plaintiff's claims are barred by the statute of limitations.

Introduction

The plaintiff claims he was sexually abused by a priest roughly thirty-five years ago. He had at most until his 23rd birthday to bring this suit, but instead he waited until he was in his forties. Even under the parties' 2007 tolling agreement, his claims are more than twenty years too late, and they are barred by the statute of limitations. No tolling theory can save the plaintiff's claims, either. He admitted to a psychiatrist—whom he knew had been retained by the Archdiocese¹—facts proving both that he has known about the alleged abuse since he claims it occurred and that he was fully capable of bringing suit about such abuse, but chose not to. The Archdiocese is entitled to judgment as a matter of law.

¹ As indicated by the attached affidavit of John A. Sieger, the plaintiff has been represented by counsel since 2007. In fact, the plaintiff met with the psychiatrist as part of an agreed but failed effort to honor his need for closure without resort to litigation.

Motion to Stay or Limit Discovery

Concurrently with this motion for summary judgment, the Archdiocese is filing a motion to stay or limit discovery pending the Court's summary judgment ruling.

Archdiocese's Use of Unfiled Discovery

The Archdiocese provides notice under Texas Rule of Civil Procedure 166a(d) that it intends to use the following previously unfiled discovery to support its motion.

On file	June 2, 2010	Plaintiff's Original Petition
Exhibit 1	July 20, 2010	Affidavit of Andrea Stolar, M.D. and exhibit Exhibit A: Psychiatric report (January 11, 2010)
Exhibit 2	July 22, 2010	Affidavit of John Sieger and exhibit Exhibit A: Tolling agreement (April 27, 2007)

To protect the identity of the plaintiff, both affidavits and their exhibits are being filed in redacted form. The psychiatric report is also redacted to show only those portions relevant to this motion for summary judgment. Unredacted versions of both affidavits and their exhibits are being provided to the plaintiff and will be submitted to the Court for in camera review.

Facts According to the Plaintiff

Allegations in petition. The plaintiff alleges he was sexually abused between 1974-1976 by a priest of a Catholic church in Houston. Orig. Pet. ¶ 2. The petition does not indicate how old the plaintiff was at the time of the alleged assaults or how old he is now, but in December 2009 the plaintiff said he was 47 years old. Ex. 1 at ex. A, p. 1.

Psychiatric evaluation. By agreement of the parties, the plaintiff submitted to a psychiatric evaluation on December 21, 2009, six months before he filed this lawsuit. The psychiatrist, Andrea Stolar, M.D., informed the plaintiff she had been retained by counsel for the Archdiocese, she would be providing a report about the plaintiff to the Archdiocese's lawyer, and nothing the plaintiff told her was confidential. Ex. 1 ¶ 7 and at ex. A, p. 1. During the

interview, the plaintiff admitted to Dr. Stolar that he had informed his brother-in-law about the alleged abuse some twelve years ago. Ex. 1 at ex. A, p. 10. He also said he disclosed the claimed assault to his family “several years ago.” *Id.* at 9. Finally, the plaintiff told Dr. Stolar that while he was in the Army, he observed two male roommates having sex, which “brought up feelings of disgust about being sexually abused by a man.” *Id.* at 10. He joined the Army when he was 16 and was enlisted for three years. *Id.* at 4.

Dr. Stolar wrote in her report that the plaintiff “was able to recall the [alleged] assaults in great detail.” *Id.* at 11.

Tolling agreement in 2007. The plaintiff was previously represented by another lawyer. On April 27, 2007, that lawyer entered into a tolling agreement with the Archdiocese on the plaintiff’s behalf. The parties agreed as follows:

[The Archdiocese agrees] to toll the statute of limitations with respect to [the plaintiff’s] claim as of today, and in return, [the plaintiff agrees] to delay filing suit until we can do a more complete investigation.

With respect to [the Archdiocese’s] agreement to toll the statute of limitations, [the Archdiocese has] agreed that [it] will not make any defensive arguments with respect to the statute of limitations to the extent that those arguments arose after today. [The plaintiff] agrees that by entering into this agreement, **[the Archdiocese has] not waived any statute of limitations defenses that existed prior to today.**

Ex. 2 at ex. A (boldface added). Thus, the question for the Court will be whether even April 27, 2007 was too late for the plaintiff to have brought this action.

Argument

I. Standards for summary judgment

Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Diversicare Gen. Partner, Inc. v. Rubio*, 185 S.W.3d 842, 846 (Tex. 2005). In deciding whether summary

judgment is proper, the court must take as true all competent evidence favorable to the nonmovant and indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *Id.*

The *Rubio* court explained the burdens of proof when the defendant moves for summary judgment based on limitations:

A defendant moving for summary judgment on the affirmative defense of limitations has the burden to conclusively establish that defense, including the accrual date of the cause of action. If the movant establishes that the statute of limitations bars the action, the nonmovant must then adduce summary judgment proof raising a fact issue in avoidance of the statute of limitations.

Id. (internal citations omitted).

II. Law on limitations

A cause of action accrues when a wrongful act causes some legal injury, even if the injury is not discovered until later, and even if not all resulting damage has occurred. *S.V. v. R.V.*, 933 S.W.2d 1, 4 (Tex. 1996). The time in which the plaintiff has to bring an action based on the injury generally runs from the time of accrual. *See* TEX. CIV. PRAC. & REM. CODE § 16.003 (two-year limitations period for personal injury runs from day cause of action accrues). The date of accrual is a question of law. *Moreno v. Sterling Drug, Inc.*, 787 S.W.2d 348, 351 (Tex. 1990) (internal citations omitted).

Construed liberally, the plaintiff's petition asserts claims for negligence, gross negligence, and premises liability, all allegedly resulting in personal injury. The statute of limitations for personal injury is two years. TEX. CIV. PRAC. & REM. CODE § 16.003(a). The petition also alleges causes of action for fraud and breach of fiduciary duty, each of which is governed by a four-year statute of limitations. TEX. CIV. PRAC. & REM. CODE § 16.004(a)(4) (fraud), § 16.004(a)(5) (breach of fiduciary duty).

A cause of action arising from a sexual assault must be brought within five years of accrual. TEX. CIV. PRAC. & REM. CODE § 16.0045(a)(1). However, the Texas Supreme Court has **not** decided whether claims that arise from a sexual assault but are asserted against someone other than the alleged perpetrator (for example, a claim against the perpetrator's employer based on vicarious liability) are governed by the five-year limitations period of section 16.0045(a)(1) or the general two-year limitations period of section 16.003(a). Jurisdictions around the country are split on how to construe statutes like section 16.0045(a).² For purposes of this motion only, the Archdiocese assumes all the plaintiff's claims are subject to the five-year statute of limitations.

If a minor is injured, the limitations period for a cause of action based on that injury is tolled until he turns 18. TEX. CIV. PRAC. & REM. CODE § 16.001(a)(1), (b). That is because minority is a "legal disability" for purposes of the statute of limitations.

Construing sections 16.001 and 16.0045(a) together, if a plaintiff was sexually assaulted as a minor, he must bring any cause of action arising out of that assault by his 23rd birthday.

III. The plaintiff's claims are time-barred as pleaded.

The petition pleads only that the alleged assaults began in 1974 and that the plaintiff was a minor at the time. The plaintiff told Dr. Stolar he was 47 years old on [REDACTED]. He would have turned 23 no later than [REDACTED], 1985. That was his deadline to sue. Even under the April 27, 2007 tolling agreement, this action is almost twenty-two years too late. The Archdiocese is entitled to judgment as a matter of law.

² Compare *Sandoval v. Archdiocese of Denver*, 8 P.3d 598, 602 (Colo. Ct. App. 2000) (limitations period for claims arising from sexual assault applies only to claims against assailant, not claims against third parties) with *Nutt v. Norwich Roman Catholic Diocese*, 921 F. Supp. 66, 72 (D. Conn. 1995) (limitations period for claims arising from sexual assault applies to claims against any defendant, not just assailant).

IV. No tolling theory can save the plaintiff's claims.

Several doctrines can toll the statute of limitations. The plaintiff has not pleaded any of them. In any event, none of the doctrines applies in this case.

A. Discovery rule

The discovery rule tolls the limitations period when “the alleged wrongful act and resulting injury are inherently undiscoverable at the time they occurred but may be objectively verified.” *S.V.*, 933 S.W.2d at 6. “An injury is inherently undiscoverable if it is by nature unlikely to be discovered within the prescribed limitations period despite due diligence.” *Id.* at 7. Many courts applying Texas law have held the discovery rule does not toll limitations for an action arising out of alleged sexual abuse of a minor. *See, e.g., Doe v. Linam*, 225 F. Supp. 2d 731, 735-36 (S.D. Tex. 2002) (discovery rule did not apply because plaintiff knew both of abuse and his psychological problems); *Marshall v. First Baptist Church*, 949 S.W.2d 504, 507 (Tex. App.—Houston [14th Dist.] 1997, no writ) (discovery rule did not apply because victim had reported the abuse and therefore had “discovered” wrongful acts); *Doe v. St. Stephen's Episcopal Sch.*, No. 09-41108, 2010 WL 2545409, *2-*3 (5th Cir. 2010) (not designated for publication) (discovery rule did not apply because all plaintiffs had mentioned abuse to other people at least five years before they sued and all had been aware of abuse since they turned eighteen).

The discovery rule does not apply here because the plaintiff's claimed injury was not inherently undiscoverable. He told Dr. Stolar about four incidents demonstrating his knowledge of the alleged abuse. First, the plaintiff told Dr. Stolar he reported the alleged abuse while he was a minor. Ex. 1 at ex. A, pp. 7-8 (“I ran out and Father _____ was there. I told him everything.”). Second, he told the doctor he thought about the alleged abuse while was in the Army (between ages 16-19) and saw two men having sex. *Id.* at 10. Each of these things occurred before the plaintiff turned 23, which was the latest date for him to sue. Third, the

plaintiff admitted he disclosed the claimed assaults to his brother-in-law about twelve years ago. Ex. 1 at ex. A, p. 10. Finally, he said he told his family about it “several years ago.” *Id.* at 9.

The plaintiff also said he never forgot about the alleged abuse. He told Dr. Stolar he had chosen not to disclose the alleged assault to his children or wife. Ex. 1 at ex. A, p. 8. He also said, “You never forget, but you don’t bring it out until you can do something about it.” *Id.*

Even if there were some basis to conclude the plaintiff had not “discovered” the alleged abuse before age 23 (and there is not), his admissions to Dr. Stolar proves he discovered it more than five years before bringing this suit. The discovery rule does not apply, and his claims are barred by the statute of limitations.

B. Fraudulent concealment

The equitable doctrine of fraudulent concealment may apply when the defendant has a duty to disclose the wrong to the plaintiff but instead, with actual knowledge of the wrong, intends to and does conceal the wrong from the plaintiff. *See Earle v. Ratliff*, 998 S.W.2d 882, 888 (Tex. 1999); *Borderlon v. Peck*, 661 S.W.2d 907, 908 (Tex. 1983). “Unlike the discovery rule, which determines when the limitations period begins to run, the doctrine of fraudulent concealment suspends the running of the limitations period after it has begun because the defendant concealed facts necessary for the plaintiff to know that a claim existed.” *Booker v. Real Homes, Inc.*, 103 S.W.3d 487, 493 (Tex. App.—San Antonio 2003, pet. denied). However, fraudulent concealment does not suspend limitations when the plaintiff discovers the wrong or could have discovered it through the exercise of reasonable diligence. *Kerlin v. Saucedo*, 263 S.W.3d 920, 925 (Tex. 2008).

As discussed, the plaintiff admitted four separate incidents providing he knew of the alleged abuse, and he also said he “never forgot.” The Archdiocese could not have concealed something he already knew. The doctrine of fraudulent concealment does not apply.

C. Unsound mind

A person of unsound mind is under a legal disability for limitations purposes, which means his cause of action does not accrue until the disability is removed. *See* TEX. CIV. PRAC. & REM. CODE. § 16.001(a), (b). The unsound mind exception protects persons without court access and those unable to participate in, control, or understand a lawsuit's progress and disposition. *Freeman v. Am. Motorists Ins. Co.*, 53 S.W.3d 710, 713 (Tex. App.—Houston [1st Dist.] 2001, no pet.). The plaintiff has the burden to plead and prove he was of unsound mind. *Smith v. Erhard*, 715 S.W.2d 707, 709 (Tex. App.—Austin 1986, writ ref'd n.r.e.). He must produce either (1) specific evidence that would enable the court to conclude he did not have the mental capacity to pursue litigation for a definite period of time, or (2) a fact-based expert opinion to that effect. *Grace v. Colorito*, 4 S.W.3d 765, 769 (Tex. App.—Austin 1999, pet. denied).

Two legal disabilities (such as minority and being of unsound mind) may not be “tacked on” to each other to extend a limitations period. TEX. CIV. PRAC. & REM. CODE § 16.001(c). Further, a disability that arises after a limitations period begins does not suspend the running of the period. *Id.* § 16.001(d). So, if a minor is sexually assaulted, limitations for a cause of action arising out of that assault begins on his 23rd birthday, and the fact that he may become of unsound mind after that time does not once again interrupt the limitations period.

The plaintiff's statements to Dr. Stolar negate any suggestion of unsound mind. First, he has been steadily employed for more than 30 years. He joined the Army when he was 16. After he left the Army, he worked with his father in his businesses, owned his own auto repair business, co-owned a trucking business with his brother-in-law, and worked at several auto repair shops. The plaintiff was laid off in September 2009, but was doing “a couple of odd jobs at the house.” Ex. 1 at ex. A, pp. 4-5. Second, he has never sought counseling or psychiatric evaluation or treatment. Although he has experienced situational depression (after the death of a

family member and the loss of a job), he told Dr. Stolar, “I’ll find something that makes me happy.” He said he has never experienced hopelessness or suicidal thoughts. In his words, “It never got that bad and it never will.” *Id.* at 10.

These facts, disclosed by the plaintiff himself, in no way suggest he was “unable to participate in, control, or understand a lawsuit’s progress and disposition,” the standard for a finding of unsound mind. The plaintiff was not under a legal disability that prevented him from filing this suit, so his claims are time-barred.

Conclusion

The Archdiocese respectfully requests that the Court grant its motion for summary judgment and enter judgment that the plaintiff take nothing on its claims. The Archdiocese also requests all other relief to which it may be entitled.

Dated: July 23, 2010

Respectfully submitted,

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Certificate of Service

I certify that a true and correct copy of *Archdiocese's Motion for Summary Judgment* was served on the following counsel of record by electronic service; certified mail, return receipt requested; facsimile; and/or hand delivery on July 23, 2010:

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Unofficial Copy Office of Marilyn Burges District Clerk

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No. 2010-41180

JOHN DOE,
Plaintiff

v.

ROMAN CATHOLIC ARCHDIOCESE OF
GALVESTON-HOUSTON, by and through
DANIEL CARDINAL DINARDO, His
Predecessors and Successors, as Bishop of the
ROMAN CATHOLIC ARCHDIOCESE OF
GALVESTON-HOUSTON et al.,
Defendants

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

125th JUDICIAL DISTRICT


Order

Pending before the Court is Reverend Terry Brinkman's Motion for Summary Judgment.

After considering the motion, any responses and replies, the governing law, the evidence, and arguments of counsel, the Court **GRANTS** the motion, *Based on the expiration of the statute of limitations.*

This is a final judgment.

Signed this 8 day of November 2010.


Hon. Kyle Carter

FILED

Loren Jackson
District Clerk

NOV - 8 2010

Time: _____
By: _____
Deputy